

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Revision of the Commissions' Rules to</b>	)	<b>CC Docket No. 94-102</b>
<b>Ensure Compatibility with Enhanced 911</b>	)	
<b>Emergency Calling Systems</b>	)	
	)	
<b>Phase II Compliance Deadlines for</b>	)	
<b>Non-Nationwide CMRS Carriers</b>	)	

**To: Wireless Telecommunications Bureau**

**REQUEST FOR LIMITED WAIVER AND EXTENSION  
OF THE HANDSET PENETRATION DEADLINE  
OF THE COMMISSION'S PHASE II E911 RULES**

East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless"), by its attorneys and pursuant to 47 C.F.R. §1.925, hereby respectfully requests a limited waiver and extension of Section 20.18(g)(1)(v) of the Commission's rules regarding Phase II of Enhanced 911 ("E911") services, 47 C.F.R. §20.18(g)(1)(v), which requires Tier III carriers who employ a handset-based Phase II solution to achieve a location-capable handset penetration rate among subscribers of at least 95% by December 31, 2005.<sup>1</sup>

As set forth below, circumstances exist wherein achieving the 95% subscriber penetration requirement by the deadline is unlikely, despite Appalachian Wireless's best efforts at promoting to subscribers handsets with automatic location identification ('ALI') features. For the reasons shown herein, Appalachian Wireless requests a six-month extension of the penetration requirement, until July 1, 2006.

---

<sup>1</sup> Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, CC Docket 94-102, Order To Stay (released July 26, 2002).

## **I. Background**

Appalachian Wireless is a cellular carrier that operates in rural markets in Kentucky Rural Service Areas 9 and 10. Appalachian Wireless is a qualified Tier III carrier, serving fewer than 500,000 subscribers as of December 31, 2001.

Appalachian Wireless has implemented a Code Division Multiple Access ("CDMA") digital network throughout its service area. The project was completed on July 15, 2004. Appalachian Wireless continues to operate a legacy TDMA/analog network technology network.

Appalachian Wireless has notified the FCC of its change of election to implement a handset-based location technology for the delivery of E911 services over the new CDMA network. Implementation of the handset solution has been expedited, and vigorous efforts have been expended to increase the penetration rate of location-capable handsets. In support of the need for an extension of the 95% penetration deadline at the end of 2005, the following is submitted.

## **II. Appalachian Wireless Has Demonstrated Good Faith in Complying with the E911 Requirements**

Appalachian Wireless has complied with the E911 requirements promulgated by the FCC, and has met the E911 implementation benchmarks to which wireless licensees are subject. After commencing operation of the new CDMA overlay in March 2004, Appalachian Wireless began selling and activating *only* location-capable digital handsets on April 15, 2004. To this day, 100% of all new digital handsets activated on Appalachian Wireless's system are location capable. Therefore Appalachian Wireless exceeded the FCC's applicable benchmark dates for deployment of ALI-capable phones, namely that 50% of handset activations be of ALI-capable phones by May 31, 2004, and that 100% of activations be of ALI-capable phones by November 30, 2004.

Nevertheless, Appalachian Wireless foresees a challenge in assuring that penetration of location capable handsets among Appalachian Wireless's subscribers will reach ninety-five percent no later than December 31, 2005.

Appalachian Wireless's full-scale CDMA network deployment has prompted subscribers to gradually adopt personal equipment upgrades. Appalachian Wireless has engaged in targeted activities to encourage subscribers with TDMA and analog handsets to convert to handsets that are compatible with the CDMA system and the Phase II data delivery system.

Customized promotional campaigns have specifically marketed new handsets, all of which are ALI-capable. Aggressive campaigns have been conducted to encourage subscribers to acquire the new handsets. Many of the ads emphasize the benefit of early renewal for TDMA and analog customers who trade in the old handsets. The campaigns have offered free phones on a buy-one-get-one-free basis, on a buy-two-get-a-third-free basis, and in association with the purchase of specified numbers of minutes. Promotions for phones with cameras, ringtones, color screens and other features have proven useful in alluring customers to upgrade their handsets. Even free gasoline cards have been offered with the purchase of a new phone. Sample ads are attached hereto.

Generic promotions are conducted with the intent to entice existing customers into visiting one of Appalachian Wireless's retail stores where, of course, only location-capable phones are sold. Once existing TDMA and analog customers are in the stores, representatives proactively sell the benefits of CDMA and request migration to a new CDMA phone. Appalachian Wireless's promotional campaigns have been conducted in print ads, by direct mail, by billing inserts and on television and radio. Special offers are posted on the carriers' web site and by signage on premises.

### **III. Appalachian Wireless Has a History of Compliance with Requests from PSAPs for E911 Services**

A total of thirteen Public Safety Answering Points ("PSAPs") are located within Appalachian Wireless's service area. All have requested Phase II E911 services, but only nine have become capable of receiving and utilizing Phase II data. Appalachian Wireless utilizes the services of Intrado to install and test the equipment necessary to transmit E911 data to PSAPs. Intrado coordinates with the PSAPs, operates the location database and optimizes E911 performance on Appalachian Wireless's CDMA network system. At present, Intrado is populating information in the Base Station Almanac for the Position Determining Equipment.

Appalachian Wireless maintains a dialogue with the PSAPs in its service area and with the Statewide Wireless E911 Coordinator. Safety officials are aware of the ongoing transition of Appalachian Wireless's handset solution, and of subscriber conversion to location-capable handsets. The PSAPs have expressed no objection or concern with the 95% penetration schedule. In light of the slower than anticipated pace of conversion of subscribers in purchasing new location-capable handsets, Appalachian Wireless requests specific relief from the penetration deadline of December 31, 2005.

### **IV. The Public Interest Would Be Served by Waiver of the Penetration Deadline**

Grant of a limited waiver to Appalachian Wireless of 47 C.F.R. §20.18(g)(1)(v) would serve the public interest. An extension through July 1, 2006, of the penetration deadline is warranted given the unique facts and circumstances of Appalachian Wireless's position. As set forth in Section 106(a)

of the Act, the Commission is to grant a waiver to Tier III carriers “if strict enforcement of the 95% subscriber penetration requirements would result in consumers having decreased access to emergency services.”<sup>2</sup> Indeed, Appalachian Wireless’s subscribers would be denied access to Phase II E911 services if Appalachian Wireless is required to deactivate existing service, or reduce construction activities because its service does not comply with FCC rules.

If not granted a waiver, Appalachian Wireless would be in the position of having to cease or reduce operations to avoid enforcement action, or expend resources to convert to a network-based solution in order to avoid handset-based liability. Neither is a practical solution. The network-based location system would not work well in Appalachian Wireless’s rural service area. Due to wide spacing and mountainous terrain, the cells would not properly triangulate to achieve required Phase II accuracy. If not granted a waiver, Appalachian Wireless would have to deactivate the TDMA and analog systems, which would take away cellular coverage from persons who depend upon those communications services in mountainous areas, and who rely upon their legacy TDMA and analog phones for safety and for elementary contact with other persons. Many of those persons are located in the most isolated and rugged service areas, and on remote farmland included within Appalachian Wireless’s rural service area. Without their TDMA and 3-watt analog phones, the customers would be unable to place calls, including calls to 911 for basic and Phase I emergency services.

These alternatives to waiver would invariably result in consumers having “decreased access to emergency services,” particularly in sparsely populated areas where the challenge is most

---

<sup>2</sup> In December 2004, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (*Enhance 911 Act*). The *Enhance 911 Act* directed the Commission to grant qualified Tier III carriers’ requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission’s Rules, if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services ”

formidable in assuring that the CDMA signal is as strong as the TDMA and analog signals. Because enforcement of the 95% deadline could have the unintended consequence of forcing Appalachian Wireless to shut down its TDMA and analog networks and deprive subscribers of basic 911 services, or to switch to a less reliable, network-based Phase II solution, Appalachian Wireless requests review under the *Enhance 911 Act* waiver standard.

In general, furthermore, a waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>3</sup> The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.<sup>4</sup> The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.<sup>5</sup> The Commission has stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.<sup>6</sup> As set forth below, Appalachian Wireless meets the Commission's standards in that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

---

<sup>4</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>5</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

<sup>6</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

<sup>7</sup> *Id.*

**V. Appalachian Wireless Has a Plan  
for Compliance with the 95% Penetration Benchmark**

As stated, 100% of digital handsets that are newly activated on Appalachian Wireless's system are ALI-capable. At the beginning of the deployment of CDMA handsets in April 2004, the percentage of activated handsets on Appalachian Wireless's system that were ALI-capable was zero. By the end of September 2005, the penetration of ALI-capable handsets had risen to 79%. The penetration rate has been increasing recently by about 4.65% per month, as demonstrated on the attached chart. Although in the past six months, the increase has been less, about 3.7% per month, the improvement represents considerable good faith progress by Appalachian Wireless to convince subscribers to exchange old handsets for new, ALI-capable handsets. This is a challenge given that many subscribers adamantly insist upon keeping their TDMA and analog phones because the phones are more dependable, operate in a larger range, and are already programmed with favorite phone numbers and customized features.

Appalachian Wireless anticipates that about 90% of its subscribers will have ALI-capable handsets by December 31, 2005. Nonetheless, anticipated conversion rates could slow due to customer resistance to change. Progress is being made, but at current conversion rates, 95% penetration cannot be assured before July 1, 2006.

Appalachian Wireless believes it will be able to meet the 95% subscriber penetration requirement by July 1, 2006, due to expected seasonal patterns of phone exchange in the holiday period and early months of the new year. On the other hand, many analog and TDMA handset users will refuse to convert until Appalachian Wireless disables the TDMA and analog signals. Subscribers who reside or travel in the most rural parts of the cellular service area will be the last to

switch to ALI-capable handsets. In service to those customers, and because of the wide open spaces traveled within the wireless service area, Appalachian Wireless will continue to offer TDMA and analog services.

In keeping with FCC rules and policy, Appalachian Wireless will maintain its policy of selling and activating only ALI-capable digital handsets. It will continue to conduct marketing campaigns to encourage consumer adoption of new handsets. Appalachian Wireless will also continue to augment its CDMA network facilities and provide Phase II E911 services and other coordination services to the local PSAPs. However, given the rural character of Appalachian Wireless's market and the reliance by local subscribers upon TDMA and analog phones and service, it is necessary for Appalachian Wireless to respectfully request grant of a waiver of the 95% penetration requirement.



## **Conclusion**

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest. Accordingly, Appalachian Wireless requests a temporary waiver and extension of time, through July 1, 2006, to achieve a location-capable handset penetration rate among subscribers of at least 95%. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver, and the request meets the standards of the *Enhance 911 Act*. Therefore Appalachian Wireless requests that a limited waiver and extension of Section 20.18(g)(1)(v) of FCC Rules be granted as proposed.

Respectfully submitted,

**East Kentucky Network, LLC**  
**d/b/a Appalachian Wireless**



---

David L. Nace  
Pamela L. Gist

Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Boulevard, Suite 1500  
McLean, Virginia 22102  
(703) 584-8678

October 19, 2005

**Appalachian Wireless**

**Samples of Marketing of Location-Capable Handsets**

# BUY ONE

# GET ONE (FREE)



## The Best Technology in Eastern Kentucky



- Nokia's 6225
- VGA Camera
  - Messaging
  - Voice Dialing & Commands
  - Internet Capable
  - WAP Browser
  - Color Display
  - Speakerphone

**Buy a Nokia 6225 Camera Phone and Get a Second One for Half Price**

Visit Your Local Appalachian Wireless Store or Dealer for Details.

**Appalachian**  
WIRELESS

APPWIRELESS.COM / (800) 438-2355

**You Always Get More With Appalachian Wireless**

## Scripts – August 05

### Spot #1 - Nokia 6015

:30 second spot, music bed upbeat

Looking for a great phone for back to school? Well look no further, Appalachian Wireless is offering the great Nokia 6015 for just one penny when you sign up for service. Browse the web, download your favorite ringtones and enjoy great service on the region's best network. Great phone, great service, local provider, what are you waiting for? This offer good while supplies last, hurry into your Appalachian Wireless store today. You always get more with Appalachian Wireless. See store for details.

### Spot #2 – Nokia 6255

:30 second spot, music bed of Free Falling, Tom Petty

Tired of high gas prices, well Appalachian Wireless is here to help!! Right now, when you purchase an accessory and a Nokia 6255 flip camera phone, we'll give you \$40 in FREE gas!! That's right, FREE GASOLINE!! The Nokia 6255 phone allows you to shoot video, take picture, store mp3s and more, PLUS!! You will be using the region's best network. No one can give you better service when you are at home OR while you are traveling than Appalachian Wireless. You always get more with Appalachian Wireless. See store for complete details.

### Spot #3 – Prepaid

:30 second spot, music bed upbeat

Send your student back to school with a wireless phone!! Appalachian Wireless has plans to fit every budget and you control the spending. For our back to school promotion, when you purchase 500 minutes you'll get the phone FREE. That's right FREE. Appalachian Wireless is a proud supporter of the local schools and now with this great deal, you can have the region's best service at our lowest price ever. You always get more at Appalachian Wireless. See store for details.

:30 Script for October  
Anniversary and Promo  
Music Bed: You're Still the One – Orleans

There's only one that has been there for you all along. After 15 years, Appalachian Wireless is 'still the one' to turn to for all your wireless needs. Founded in the fall of 1990, Appalachian Wireless is the only carrier to serve this market from day one. Others come and go, but we've always been here for you. Right now, get the great Motorola V262 and when you purchase 2, your third phone is FREE!! See stores for details. Appalachian Wireless is 'still the one', always has and always will. You always get more with Appalachian Wireless.

:30 Script for October  
Anniversary and Promo  
Music Bed: You ain't seen nothing yet – Bachman, Turner, Overdrive

After 15 years, there's only one company you have been able to depend on for great service, and 'you ain't seen nothing yet'. Appalachian Wireless provides you with great coverage, local customer service, scholarships, local schools, economic support to our region, there's only one that stands strong for you. Come on over to the home team, and experience the Appalachian Wireless difference. Right now, take advantage of our great offer for the Motorola V262, Buy two and your third phone is FREE!! See stores for details. Get ready because 'you ain't seen nothing yet'. You always get more with Appalachian Wireless.

:30 Script for October  
Services  
Music Bed: You ain't seen nothing yet – Bachman, Turner, Overdrive

Which wireless company has been here all along? Appalachian Wireless! As we prepare to celebrate our 15<sup>th</sup> anniversary, we've only scratched the surface. Your local provider of CDMA service, great phones, superior coverage, local customer service, and the one you can turn. We're a local company, but provide you with nationwide service, world class features, and more. Only Appalachian Wireless has been here for day one. No other wireless provider can say the same. See your local store today, and start using the regions best service. You always feel appreciated with us. You always get more with Appalachian Wireless.

**Appalachian Wireless**

**Location-Capable Handset Penetration Rates**

Appalachian Wireless  
Location-Capable Handset  
Systemwide Penetration Rate

Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
0%	14%	22%	26%	30%	36%	38%	42%	46%

Jan-05	Feb-05	Mar-05	Apr-05	May-05	Jun-05	Jul-05	Aug-05	Sep-05
50%	53%	57%	60%	63%	68%	72%	74%	79%

**Declaration of**  
**Gerald Robinette**  
**General Manager, Appalachian Wireless**



## DECLARATION


I, Gerald Robinette, hereby state and declare:

1. I am General Manager of East Kentucky Network, LLC d/b/a Appalachian Wireless, a wireless telecommunications services operator and the Petitioner herein.

2. I am familiar with the facts contained in the foregoing "Request For Limited Waiver And Extension Of The Handset Penetration Deadline Of The Commission's Phase II E911 Rules" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this \_\_\_\_ 19<sup>th</sup> \_\_\_\_ day of October, 2005.

  
\_\_\_\_\_  
Gerald Robinette  
General Manager